

THE HONORABLE ROBERT J. BRYAN

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARGARET DIBB, SHANUA OVIST, and
WENDY GONDOS on behalf of herself and on
behalf of others similarly situated,

Plaintiffs,

vs.

ALLIANCEONE RECEIVABLES
MANAGEMENT, INC.,

Defendant.

NO. 3:14-CV-05835-RJB

**PLAINTIFFS' PROPOSED NOTICE
PLAN**

I. INTRODUCTION AND BACKGROUND

Plaintiffs bring this class action lawsuit pursuant to the Fair Debt Collection Practices Act (FDCPA), the Washington Consumer Protection Act (CPA), and the Washington Collection Agency Act (CAA). On December 16, 2015, this Court certified the following Class and Sub-Classes:

Umbrella Class: All persons who wrote checks within the State of Washington, to whom AllianceOne sent, at any time since October 20, 2010, a Notice of Dishonor of Check in connection with an allegedly unpaid check, in a form substantially similar to the one allegedly sent to Plaintiffs.

FDCPA Sub-Class: All persons in the umbrella class whose check was written to the Washington Department of Licensing to pay a fee incurred primarily for personal, family or household purposes, to whom AllianceOne sent a NOD on or after October 20, 2013.

CPA Sub-class: All persons in the umbrella class, to whom AllianceOne sent a NOD on or after October 20, 2010, and who paid any fees to Defendant.

Pursuant to the Court's Order (Dkt. No. 134), Plaintiffs respectfully submit this plan for sending notice to the certified Class and Sub-Classes.

II. PROPOSED FORMS AND MANNER OF NOTICE

In order to notify Class members that this case has been certified as a class action, Plaintiff proposes mailing a postcard substantially similar to the one attached as Appendix A (Postcard Notice) via First Class Mail to all Class and Sub-Class members, whose addresses Defendant provides. The Postcard Notice includes basic information about the class action and the right to be excluded, and direct Class members to a website where they can find detailed information about the action, including (1) a Long-form Notice in substantially the form as that attached as Appendix B; (2) Plaintiffs' Third Amended Complaint (Dkt. No. 58); (3) Defendant's Answer (Dkt. No. 77); and (4) this Court's Order on Defendant's Motion to Deny

1 Class Certification and Plaintiffs' Motion for Class Certification (Dkt. No. 134). Class Counsel
 2 will also use the website to keep Class members apprised of important dates and deadlines in
 3 the litigation, and to provide answers to frequently asked questions. Both the Postcard Notice
 4 and the website will provide Class Counsel's contact information, including a toll-free number
 5 the Class members may call if they would like further information.

6 The proposed forms of notice, written in plain English and easily understood, provide
 7 neutral and objective information about the nature of the litigation and the Class claims. *See*
 8 *generally* Apps. A, B. The forms include information about who is in the Class, a statement of
 9 each Class member's rights (including the right to opt out of the Classes), a statement of the
 10 consequences of remaining in the Class, and methods for contacting Class Counsel and
 11 obtaining more information and documents regarding the litigation.

12 To opt out of the lawsuit, a Class member only has to sign and mail a letter to Class
 13 Counsel (postmarked by the opt-out deadline) indicating that he or she desires to be excluded
 14 from the litigation. Plaintiff proposes setting the opt-out deadline forty-five days from the date
 15 notice is initially mailed to the Classes. This period will give Class members ample time to
 16 receive notice, make an informed decision regarding their participation in the case, and, if they
 17 choose, exercise their right to opt out

18 **III. THE PROPOSED FORMS AND MANNER OF NOTICE**

19 To protect the rights of absent class members, the Court must provide them with the
 20 best notice practicable when it certifies a class under Fed. R. Civ. P. 23(b)(3). The best notice
 21 practicable is that which is "reasonably calculated, under all the circumstances, to apprise
 22 interested parties of the pendency of the action and afford them an opportunity to present their
 23 objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

24 **A. Plaintiffs' Plan for Disseminating Notice Satisfies Due Process**

25 Where the names and addresses of potential class members are readily ascertainable,
 26 notice by mail is generally the preferred method. Manual for Complex Litig. (Fourth) §
 27

21.311, at 391–92 (2015). “Posting notices on dedicated Internet sites, likely to be visited by class members and linked to more detailed certification information, is a useful supplement to individual notice, might be provided at a relatively low cost, and will become increasingly useful as the percentage of the population that regularly relies on the Internet for information increases.” *See id.* at 392.

Here, Plaintiff is working with Seattle Mailing Bureau (SMB), a direct mailing company. Using the Class member information provided by Defendant, SMB will perform address updating through National Change of Address processing. SMB will then mail notice directly to each Class member. Plaintiffs will attempt to re-mail any Postcard Notices that are returned as undeliverable. If a Postcard Notice is returned with a forwarding address, Plaintiffs will attempt to re-mail the notice to the address provided. If a Postcard Notice is returned without a forwarding address, Plaintiffs will use a skip tracing database service to find possible alternate addresses. Thus, due process is satisfied. *Mullane*, 339 U.S. at 318.

B. Plaintiffs’ Proposed Forms of Notice Satisfy Due Process

The effectiveness of a notice effort depends in large part on the form given to the notice. As a general rule, notice should come to the attention of a class member in terms that are clear and simple and should be neutral, objective, and informative. 3 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 8:12 (5th ed. 2015); *see also* Fed. R. Civ. P. 23 advisory committee’s note (2003) (“The direction that class-certification notice be couched in plain, easily understood language is a reminder of the need to work unrelentingly at the difficult task of communicating with class members.”). The notice “must avoid endorsing the merits of the claim.” *See Adoma v. Univ. of Phoenix, Inc.*, No. CIV. S-10-0059 LKK/GGH, 2010 WL 4054109, at *2 (E.D. Cal. Oct. 15, 2015) (citing *Hoffman La-Roche v. Sperling*, 493 U.S. 165, 173 (1989)).

Plaintiffs’ proposed notice forms meet these goals. The notices’ tone is neutral. *See* Apps. A–B. The forms are “intended to be noticed” and easy to understand, with large

1 headlines. *Id.* Without becoming overwhelming or mired in legalese, the notices include
 2 enough information to all Class members to make informed decisions regarding their right to
 3 participate in or opt out of the action. *See id.* Class members who would like additional details
 4 are given convenient mechanisms by which to gather such information such as a toll-free
 5 number, internet address, and traditional mailing address for Class Counsel and the website. *Id.*

6 Most importantly, though, Plaintiffs' proposed notice forms comport with the
 7 requirements of Fed. R. Civ. P. 23 and due process. When notice is issued it must advise each
 8 class member of (1) the nature of the action; (2) the definition(s) of the certified classes; (3) a
 9 description of the class claims; (4) that a class member may enter an appearance through
 10 counsel if the member so desires; (5) that the Court will excluded from the classes any member
 11 who requests exclusion, stating when and how members may elect to be excluded; and (6) the
 12 binding effect of a class judgment on class members who do not request exclusion. *See Fed. R.*
 13 *Civ. P. 23(c)(2)(B); see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (stating
 14 due process requires notice to apprise party of pendency of action, afford party opportunity to
 15 appear describe party's rights, and provide party opportunity to opt out of action). The forms
 16 Plaintiffs have proposed satisfy each of these requirements. *See* Apps. A–B.

17 IV. CONCLUSION

18 If implemented, Plaintiffs' proposed plan will achieve the ultimate objective of
 19 providing neutral, informative notification of this action to Class members so that they can
 20 make knowledgeable and reasoned decisions regarding their rights. Under the circumstances,
 21 this is the best notice practicable. For these reasons, Plaintiffs respectfully request that the
 22 proposed notice plan be approved.

1 RESPECTFULLY SUBMITTED AND DATED this 15th day of January, 2016.

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CERTIFICATE OF SERVICE

I, Erika L. Nusser, hereby certify that on January 15, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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